IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5405 of 2007()

CRIME NO.95/07 OF KARIMANNOOR POLICE STATION

PETITIONER: ACCUSED NO.2

N.K.ABU, S/O. KUNJU
NEDUMALA HOUSE, ANIKKUZHA KARA
NEYYASSERI VILLAGE,
THODUPUZHA TALUK

BY ADV. SRI.RENJITH B.MARAR
SMT.LAKSHMI.N.KAIMAL

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE
KARIMANNOOR POLICE STATION
THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRIL. GIKKU JACOB.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5405 OF 2007

Dated this the 11th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused in a crime registered, inter alia, under Secs.420 and 406 of the IPC. The petitioner and the 1st accused were the office bearers of the S.N.D.P. Sakha. The 1st accused was the President and the petitioner was the Manager of a school run by the Sakha. The crux of the allegations against the accused persons is that they have received huge amounts on behalf of the Sakha/school; but had not brought such amounts into the accounts of the school/Sakha. The crime was registered on the basis of a private complaint filed by the de facto complainant before the learned Magistrate which was referred by the learned Magistrate to the police under Sec.156 (3) of the Cr.P.C. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Even if all the allegations were accepted in toto, what is revealed is that the 1st accused, in his capacity as the President of the Sakha, had not properly accounted for the amounts received. The petitioner has no culpable contumacious role. In these circumstances, the petitioner may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that all the indications presently available do convincingly suggest that the petitioner also had contumacious responsibility for the amounts received on behalf of the Sakha/school which have not been accounted in the books of account.

4. In the nature of the contentions raised, the learned Public Prosecutor was requested to place the Case Diary before me for my perusal. I have perused the Case Diary. At this early stage of the investigation, I shall scrupulously avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am unable to find any features in this case which warrant or necessitate the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the

learned Public Prosecutor, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge